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ALEXANDER L. STEVAS,
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No. 83-2153

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

UNION COMMERCE BANK,
Petitioner,

v.

DEFFET RENTALS, INC.,
GEORGE DEFFET AND ROSE DEFFET,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of Ohio and the Court of Appeals for Cuyahoga County, Eighth District Court of Appeals, erred in reversing the trial court's granting of a motion for summary judgment and depriving plaintiffs-appellees of their day in Court.

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REASONS FOR NOT GRANTING A WRIT OF CERTIORARI

The within petition is bottomed upon two misconceptions with respect to the rulings of the Ohio Courts. The first is a misinterpretation of 11 U.S.C. § 110i (now repealed), while the second raises the specter of Full Faith and Credit which is in no way germane to the issues in this dispute. At the same time, the petitioner seeks delay against the day of reckoning; a trial on the merits.

The statute which controlled the revesting of title to property in the Deffets was 11 U.S.C. § 110i (now repealed), which provided in pertinent part:

> "Upon the confirmation of an arrangement or plan, or at such later time as may be provided by the arrangement or plan, or in the order confirming the plan, the title to the property *dealt with* shall revest in the bankrupt or debtor. . . ." (Emphasis added.)

Petitioner confuses the language of 11 U.S.C. § 110i ". . . dealt with . . ." with "scheduled" in Chapter X bankruptcy proceedings or seeks to mislead in that direction. The Court of Appeals was not misled nor was the Ohio Supreme Court. In its decision, the Court of Appeals dealt with the major authority, *First National Bank* v. *Lasater* (1905), 196 U.S. 115, cited by petitioner for the proposition now urged. After setting forth the general rule that a debtor who has not disclosed an asset in bankruptcy cannot thereafter assert rights in the asset and citing *Buckingham* v. *Buckingham* (1880), 36 Ohio St. 68, the Court succinctly states:

> "The language of *Buckingham* and *Lasater* is clear. "Mentioned or disclosed," "otherwise informed," "trustee is ignorant," and "withholding knowledge of its existence" are all phrases that suggest that the fact of notification, not the method, is what is central. Here, Deffet provided abundant proof of notification and of lack of withholding of knowledge. Deffet has shown both oral notice to court and creditors, and written notice by way of related court proceedings. In addition, they filed suit on the claims in Federal District Court and in Common Pleas Court while the bankruptcy was pending. Moreover, other documentary evidence is available that would bear on the issue of notice: . . . "

Questions one and two presented by petitioner fall.

Petitioner urges a violation of the Full Faith and Credit Clause as well as the doctrine of collateral estoppel. Neither

are pertinent to the facts of this case. The Deffets seek redress for a fraud committed by petitioner while the bankruptcy proceedings were pending in Ohio. This matter was before the Court of Appeals on the issue of summary judgment, and it is evident, that even upon reconsideration, the Court did not find collateral estoppel was established, but rather there is an issue of fact as to a fraud in Ohio without regard to a judgment of a sister state.

CONCLUSION

The Ohio Courts refused summary judgment since the claims were "dealt with" and there was no violation of the Full Faith and Credit Clause. It is respectfully submitted that there is no viable ground for the sought after Petition and it should be denied.

Respectfully submitted,

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